Krishnan a/l Rahman & Anor v Munian a/l Yellapen

HIGH COURT (PULAU PINANG) — CIVIL APPEAL NO 12-40 OF 2002
KAMALANATHAN RATNAM J
26 JULY 2002

Civil Procedure *— Appeal — Fact, finding of — Collision between motorcycle and motorcar — Whether collision occurred at road junction — Findings of sessions court judge that accident occurred after plaintiff had made his turn to the right — Whether there was any reason to disagree with the sessions court judge's finding*

Road Traffic *— Negligence — Collision between motorcycle and motorcar — Whether collision occurred at road junction — Whether defendant to be blamed for collision*

The plaintiff was riding a motorcycle towards the direction of Butterworth when his motorcycle was hit by a car driven by the second defendant. The plaintiff's case was that he had stopped at a junction for about ten minutes and when the road was clear, he proceeded to turn right and had traversed about 30m in the direction of Butterworth when he was collided into from the rear by the second defendant's car. On the other hand, the defendants' case was that the plaintiff emerged onto the main road from the side road without stopping at the junction. After hearing the evidence of both parties, the sessions court judge found the defendants totally liable. The defendants appealed.

Held, dismissing the appeal:

(1) The sessions court judge correctly analyzed the evidence before she concluded that the accident did not occur at the junction as claimed by the second defendant, but occurred some 30m away from the junction. She accepted the plaintiff's evidence on this and the same was corroborated by the investigating officer who testified that the brakemarks of the defendants' car commenced about 30.1m away from the junction. There was no reason to disagree with the findings of the sessions court judge that the accident had occurred after the plaintiff had made his turn to the right and had proceeded to a distance of some 30m (see p 260C–D)

(2) From the judgment of the sessions court judge, it was clear that she had meticulously considered all aspects and had ruled out negligence on the part of the plaintiff (see p 260E–F).

[Bahasa Malaysia summary

Plaintif sedang menunggang sebuah motosikal ke arah Butterworth bilamana motosikal beliau telah dilanggar oleh sebuah kerena yang dipandu oleh defendan kedua. Kes plaintif adalah bahawa beliau telah berhenti di satu persimpangan selama lebih kurang sepuluh minit dan

apabila jalan mula lapang, beliau meneruskan perjalanan dengan membelok ke kanan dan berjalan menyeberangi lebih kurang 30m ke arah Butterworth apabila beliau dilanggar daripada belakang oleh kereta defendan kedua. Sebaliknya, kes defendan-defendan adalah bahawa plaintif telah muncul di jalan utama daripada jalan tepi tanpa berhenti di persimpangan tersebut. Selepas mendengar keterangan kedua-dua pihak, hakim mahkamah sesyen mendapati defendan-defendan bertanggungan sepenuhnya. Defendan-defendan telah merayu.

Diputuskan, menolak rayuan tersebut:

(1) Hakim mahkamah sesyen telah dengan betulnya menganalisis keterangan sebelum beliau memutuskan bahawa kemalangan tersebut tidak berlaku di persimpangan seperti mana yang dituntut oleh defendan kedua, tetapi berlaku lebih kurang 30m dari persimpangan tersebut. Beliau telah menerima keterangan plaintif atas perkara ini dan perkara yang sama telah disetujui oleh pegawai menyiasat yang memberi keterangan bahawa tanda-tanda brek kereta defendan-defendan bermula lebih kurang 30.1m dari persimpangan tersebut. Tidak terdapat alasan untuk tidak bersetuju dengan keputusan hakim mahkamah sesyen bahawa kemalangan tersebut telah berlaku selepas plaintif membelok ke arah kanan dan telah berjalan ke satu jarak berukuran lebih kurang 30m (lihat ms 260C–D).

(2) Daripada penghakiman hakim mahkamah sesyen, ianya adalah jelas bahawa beliau telah mempertimbangkan dengan penuh hemat kesemua aspek dan telah memutuskan kecuaian di pihak plaintif (lihat ms 260E–F).]

Notes

For cases on collision between motorcycle and motorcar, see 11 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 814–819.

For cases on finding of fact, see 2 *Mallal's Digest* (4th Ed, 2001 Reissue) paras 814–819.

P Ramanathan (*VP Nathan & Partners*) for the appellant/defendant.

E Gnasegaran (*E Gnasegaran & Co*) for the respondent/plaintiff.

Kamalanathan Ratnam J:

Facts

At all material times, the plaintiff was riding motorcycle PEB 5752. The second defendant was the driver of motorcar ABD 8098 which was owned by the first defendant. An accident occurred between these two vehicles on 22 July 2000 at about 8.45pm.

Plaintiff's case

It was the case of the plaintiff that he had in fact initially come from a road called Jalan Belibis, situated on the right as one faces Butterworth. He had stopped at the said junction for about ten minutes with his right indicator on for traffic from both sides of the main road to be clear before he proceeded and turned right towards the direction of Butterworth. Before emerging, he looked to the left. He could see to a distance of about 30m and his road was clear. He then moved across the road and had traversed about 30m in the direction of Butterworth when he was collided into from the rear by the defendants' motorcar which came from the direction of Ipoh.

Case for the defence

It was the defendants' case that the plaintiff emerged onto the main road from the side road without stopping at the junction.

Findings of the court

After hearing, the evidence of both parties the learned judge of the sessions court found the defendants totally liable. Dissatisfied with that decision, the defendants appealed. On 10 June 2002, I heard this appeal and dismissed it with costs. The defendants have now appealed against my decision.

At the outset of the hearing, counsel for the plaintiff informed the court that he was withdrawing his cross-appeal against the award of damages. I therefore struck out the cross-appeal against quantum with no order as to costs.

In his evidence, the plaintiff maintained that the collision occurred not whilst he was making a right turn but after he had executed the turn and had proceeded for about 30m. Under cross-examination, he confirmed that from the junction where he had waited for about ten minutes, he had an unobstructed view to the left for about 45ft. He had to wait for about ten minutes because of the heavy flow of traffic. When he emerged from the junction, there were no vehicles from either direction. He denied the suggestions that he crossed the road without stopping at the junction whilst the defendants' motorcar was heading towards him.

The investigating officer testified that the front right bumper and mudguard of the motorcar were dented and broken. The front right signal was also broken. As for the motorcycle, its rear number place at the left together with the rear left signal light were broken. The left rear absorber together with the left front and rear foot rests were bent forwards. Unfortunately, counsel for the appellant, in preparing by consent the Record Rayuan Tambahan, failed to include the key to the sketch plan in the said bundle.

When the plaintiff was recalled for further cross-examination, he testified that he saw the lights of a motorcar from his left about 100m away. He therefore proceeded to cross. He denied a suggestion that the accident had occurred at the junction. A

The second defendant, the driver of the motorcar, testified that when he reached the junction, he suddenly noticed the plaintiff crossing the road. He swerved to the left to avoid the collision but the motorcycle became entangled with his right bumper. He denied that he had collided into the left rear of the motorcycle. He then said he could not remember specifically which part of the motorcycle he had collided into. He had not noticed the motorcycle any earlier. He was, however, sure that the collision occurred as he reached the junction. He then admitted that the collision in fact occurred between 30–35ft from the junction. He however, denied that the collision occurred 30m from the junction. B C

The learned judge of the sessions court correctly analysed the evidence before her and concluded that the accident did not occur at the junction as claimed by the second defendant, but some 30m away from the junction. She accepted the plaintiff's evidence on this and this was corroborated by the investigating officer who testified that the brake marks of the defendants' car commenced about 30.10m away from the junction. I see no reason to disagree with the findings of the learned sessions court judge that the accident had indeed occurred after the plaintiff had made his turn to the right and had proceeded to a distance of about 30m. D E

I also accept her reasoning that if the motorcycle had emerged from the junction and had collided into the defendants' motorcar, the front of the motorcycle would have been damaged.

Reading the entire judgment of the learned sessions judge, I found that she has meticulously considered all aspects and had ruled out any negligence on the part of the plaintiff. I agree with her finding that even on his evidence, the second defendant was inconsistent. In examination-in-chief, the second defendant said that it was the plaintiff who had collided into him. However, in cross-examination he said that as the motorcycle encroached into his path he swerved and braked and the collision occurred. F G

The second defendant's inconsistency reached its height when he said that the first time he saw the motorcycle it was already ahead of him. This statement when compared with his earlier statement that it was the motorcycle that collided into him, is irreconcilable.

But what is of significance is that in his submission before me, counsel for the appellants indicated that he was 'not seriously pursing the point whether he (the plaintiff) stopped or not at the junction'. Counsel stressed that it was the duty of the plaintiff not to emerge from the junction while the major road was not clear of traffic. But this is precisely what the plaintiff did. He said he waited at the junction for nearly ten minutes before emerging across the road, as the said road was heavy with traffic. When the road was clear and when he saw lights about 100m away he crossed and had moved for a distance of about 30m when he was collided into. H I

A I agree with the decision of the sessions judge that the defendant was totally liable for the accident. I therefore dismissed the appeal on liability with costs.

Appeal dismissed.

B Reported by Lim Lee Na

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